United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/894
20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 894

Cases No. 820: MANSOUR
No. 880: MANSOUR

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Deborah Taylor Ashford, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Victor Yenyi Olungu;

Whereas, on 2 April 1997, Khalil Mohammed Mansour, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 September 1997, the Applicant, after making the necessary corrections, again filed an application in which he requested, in accordance with article 11 of the Statute of the Tribunal, the revision of Judgement No. 777, rendered by the Tribunal on 21 November 1996, and an order for production of certain documents;

Whereas the Respondent filed his answer on 5 February 1998;

Whereas the Applicant filed written observations on 4 May 1998;

Whereas, on 2 and 27 July 1998, the Applicant submitted additional documents;

Whereas, on 27 July 1998, the Tribunal put questions to the Applicant, to which he

provided answers on 31 July 1998;

Whereas, on 11 August 1998, the Tribunal informed the parties that it had decided to adjourn consideration of the case until its next session;

Whereas, on 11 August 1998, the Tribunal put further questions to the Applicant to which he provided answers and submitted additional documents on 4 September 1998;

Whereas, on 15 September 1998, the President of the Tribunal requested the Respondent to provide his comments on the Applicant's submissions, which he did on 23 September and 1 October 1998;

Whereas, on 8 October 1998, the Applicant submitted a response to the Respondent's 1 October 1998 comments;

Whereas, on 28 October 1998, the Tribunal requested the Respondent and the Applicant to produce certain documents, which they did on 5 November and 6 November 1998, respectively;

Whereas the facts in the cases have been set forth in Judgement No. 777.

Whereas the Applicant's principal contentions are:

1. The Tribunal misstated the sequence of events and therefore overlooked the causal link between the Applicant's criticisms of the quality of batteries and retreads, on the one hand, and the deferrals of the Applicant's salary increments and his termination, on the other.

2. The Tribunal should have ordered the Respondent to produce certain documents that would have established the causal link between the Applicant's criticisms and the actions taken against him.

Whereas the Respondent's principal contention is:

The application for revision does not comply with the conditions of article 11 of the Tribunal's Statute for the revision of a judgement and thus should be rejected. The

Applicant has failed to identify any newly discovered fact of a decisive nature that was unknown to the Tribunal and to the Applicant when the judgement was given.

The Tribunal, having deliberated from 7 to 31 July 1998 in Geneva, and from 27 October to 20 November 1998 in New York, now pronounces the following judgement:

I. The Applicant brought his two cases before the Tribunal for the first time in 1994 and 1995, respectively. They were considered and decided by the Tribunal in its Judgement No. 777 rendered on 21 November 1996. The Applicant now presents an application requesting a revision of Judgement No. 777 under article 11 of the Tribunal's Statute.

II. The Tribunal, in its Judgement No. 303, Panis (1983), paragraph I, stated:

> "Applications for revision of a judgement delivered by the Tribunal must be considered in the light of the standards imposed by article 12 [now article 11] of the Tribunal's Statute. That article enables the Secretary-General or the Applicant to 'apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence ...' ... The standards contained in article 12 [now article 11] are accordingly relatively strict and lay a substantial burden upon a party who requests revision."

(Cf. also Judgement No. 460, Shatby (1989)). Under its Statute, the Tribunal's powers of revision of a judgement are strictly limited and may be exercised only upon compliance with the conditions set forth in article 11. No party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation.

III. In his original cases before the Tribunal, the Applicant had claimed, among other things, that his annual increment was improperly deferred and that he was improperly terminated after criticizing his supervisors. The Tribunal, after examining the entire record, held that the Applicant's claims were unfounded. The Applicant now alleges that in rendering Judgement No. 777, the Tribunal did not have access to documents and facts that would have proven that his termination was due to prejudice against him.

IV. In this instance, the Tribunal ordered production of those documents requested by the Applicant that the Tribunal deemed to be potentially relevant. The Tribunal has reviewed those documents and finds that they do not include any evidence "of such a nature as to be a decisive factor" which was unknown at the time Judgement No. 777 was rendered.

V. For the foregoing reasons, the Tribunal rejects the Applicant's pleas in their entirety.

(Signatures)

Deborah TAYLOR ASHFORD
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Victor YENYI OLUNGU
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/895
20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 895

Case No. 879: MUSEIBES

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza; Mr. Kevin Haugh;

Whereas, on 4 February 1998, Hasan Mohd. Museibes, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application in which he requested the implementation of Judgement No. 794, rendered by the Tribunal on 21 November 1996;

Whereas the application contained pleas which read, in part, as follows:

"1. The second item in sub-paragraph (ii) of paragraph VIII of UNAT Judgement [No.] 794 [should] be fully implemented, that is:

2. The amount of SYP [Syrian pounds] 231,120, which the Respondent fell short of calculating by prorating, be calculated (by prorating) at the exchange rate in effect on 30 September 1993 (...);

3. Again, the amount of SYP231, 120 be calculated at the operational exchange rate in July 1997, when I actually collected it;

4. I be compensated for the value of the above-mentioned financial balance (the value of about US$3,375 in Syrian pounds) at the exchange rate on the date the Agency issues a cheque for me in Syrian pounds;

5. Finally, regarding subparagraph (I) of UNAT Judgement [No. 794], paragraph VIII, I also kindly request that I be compensated for the moral and psychological harm as a result of the Administration's failure to abide by the first item of the said judgement and to keep the post-offer open for me and reappoint me to either of the two posts of English teacher which became vacant at Aleppo and Lattakia in June 1997, and were both filled in September 1997."

Whereas the Respondent filed his answer on 30 April 1998;

Whereas the Applicant filed an additional document on 30 May 1998;

Whereas the Applicant filed written observations on 22 August 1998;

Whereas the Applicant filed additional documents on 13 and 30 October 1998;

Whereas the facts in the case have been set forth in Judgement No. 794.

Whereas the Applicant's principal contentions are:

1. The Respondent failed to implement the Tribunal's order that the Applicant be given priority for the first relevant vacant post. It was up to the Applicant, not the Agency, to decide whether he wished to be granted the post or the alternative award of compensation.

2. The Applicant should have been paid the Syrian pound equivalent, based on the rate of exchange in effect on the date of payment, of the value of 30 months of his salary in U.S. dollars, as calculated on the date of separation. The number of Syrian pounds he actually received was much less than the U.S. dollar equivalent on the date of his separation.

Whereas the Respondent's principal contentions are:

1. The Tribunal's judgement gave the Respondent two alternative means of complying with the order, and the Applicant himself accepted the compensation paid to him.

2. The Respondent paid the Applicant the proper amount of compensation. The reference to an "exchange rate" in the order of the Judgement has no bearing on the payment, as the Applicant's salary was payable in Syrian pounds and the Tribunal ordered that the compensation be paid in Syrian pounds.

The Tribunal, having deliberated from 5 to 20 November 1996, now pronounces the following judgement:

I. Paragraph VII of the Tribunal's Judgement No. 794, Museibes (1996), correctly describes the Commissioner-General's letter of 14 August 1995 as "offer[ing] to pay to the Applicant the equivalent of two years' salary at the rate in effect on the date when the Applicant resigned, in full and final settlement of all claims raised in the appeal." It appears that the said offer was still on the table as of 21 November 1996, when the Tribunal rendered Judgement No. 794. Later, in the same paragraph, appears an inaccurate reference to that offer, i.e., stating that the Respondent was willing to pay "the amount in Syrian pounds at the *exchange rate* in effect on 30 September 1993."

II. How the words "at the *rate* in effect" came to be transformed into "at the *exchange rate* in effect" cannot be ascertained at this point. Whether it was due to a typographical error, a dictation error, or merely an ordinary human error (even Homer nods), the Tribunal is satisfied that this transformation was the result of a mistake. It is not likely to

have been the intention of the Tribunal to measure compensation in US dollars, as the Tribunal would more likely have intended to follow its normal practice for a case such as this and award compensation in Syrian pounds.

III. It appears that this error was repeated in the final part of its Judgment when it recited in its order that if the Respondent did not offer priority to the Applicant in the matter of reinstatement, it should, as an alternative, pay the equivalent of 30 months salary to the Applicant, "the amounts to be paid in Syrian pounds, at the *exchange rate in effect on 30 September 1993*." The Tribunal is satisfied that this again misstates the Tribunal's intentions and arises from a repetition of the earlier mistake. Had the Tribunal intended the Applicant to be compensated in US dollars, it would have said so. Or if it had intended the Applicant to be paid in Syrian pounds based on the exchange rate with US dollars, it likewise would have so stated. The Tribunal cannot now ascertain or identify any reference appearing in the text to any currency other than the Syrian pound and cannot see why there should be a reference to a different currency or to any exchange rate when the judgement specified that the payment was to be made in Syrian pounds. Furthermore, if the judgement is to be construed on the lines argued for by the Applicant, it would have little or no meaning, as the Applicant's earnings as of 30 September 1993 would be translated into US dollars at the exchange rate in effect on that date and would then be immediately translated back into Syrian pounds on the same date. Such an exercise would be futile.

IV. In essence, what the Applicant claims is that his salary should be calculated as of the date of his separation in US dollars, and that he should then be compensated in the Syrian pound equivalent of that number of US dollars, based on the rate of exchange on the date that he was paid. Had that been the Tribunal's intention, the Tribunal would have simply ordered payment in US dollars, rather than in Syrian pounds.

V. It is clear from Judgement No. 794 that the reference to 30 September 1993 was included therein in order to identify the relevant date for the calculation of the Applicant's salary. The reference to an exchange rate on the date of his separation could have no relevance to the calculation of the Applicant's compensation if, as he maintains, his compensation were to be calculated based on the exchange rate of the date on which the compensation was actually to be paid.

VI. For the above reasons, the Tribunal is satisfied that the judgement as rendered contains a clerical error or an error arising from an accidental slip or omission of the type contemplated in article 11 of the Tribunal's Statute.

VII. Finally, the Tribunal takes note of the Applicant's argument that the Respondent was required to accept the first alternative of the order in Judgement No. 794 that he be "offered priority for the first relevant vacant post ..." The Applicant contends that the existence of an alternative order for compensation gave the Applicant the opportunity to decide whether he preferred to receive priority for a post or to be compensated for his injury. However, article 9, paragraph 1 of the Tribunal's Statute unequivocally states that it is for the "Secretary-General [in this case, the Commissioner-General]... [to] decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case ..."

VIII. For the foregoing reasons, the Tribunal orders that Judgement No. 794 be corrected as follows:

1. The last sentence of paragraph VII of Judgement No. 794, should read as follows: "The Respondent is willing to pay two years of his net base salary at the rate in effect on 30 September 1993, to be paid in Syrian pounds"; and

2. The word "exchange" should be stricken from the order. Paragraph VIII (ii) of Judgement No. 794, should read: "In the alternative, the Applicant be paid the equivalent of six months of his net base salary at the rate in effect on the date of his resignation. In addition, the Applicant should also be paid the two years' net base salary offered to him by the Respondent, at the rate in effect on 30 September 1993, payable in Syrian pounds."

IX. The Tribunal makes no further order.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Member

Kevin HAUGH
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary